

Appl. No. 10/687,845
Docket No. CM2526C
Amdt. dated October 19, 2007
Reply to Office Action mailed on July 19, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 10-17, 19, and 20 are pending in the present application. No additional claims fee is believed to be due.

Claim 18 is canceled without prejudice.

Rejection Under 35 U.S.C. § 112, Second Paragraph

The Office Action states that Claim 18 provides insufficient antecedent basis. Claim 18 is canceled without prejudice which thereby renders the rejection moot.

Rejection Under 35 U.S.C. § 103(a) Over Williams (US 6,506,958) in View of Hasegawa et al. (US 5,364,626)

Claims 10-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams (US 6,506,958) in view of Hasegawa et al. (US 5,364,626). The Applicants respectfully assert that the Office Action fails to establish a *prima facie* case of obviousness against Claim 10 because there is no motivation to combine Hasegawa et al. with Williams. The Applicants respectfully further assert that even if a *prima facie* case of obviousness is properly established, the references, as cited, teach away from the claims of the present application.

The Applicants submit that there is no motivation to combine Williams and Hasegawa et al. for three reasons. First, Williams is to a signal tampon (see e.g. Title). Williams states that the indicator is designed to provide a sensory signal to the user that the capacity of the tampon is exhausted. (see e.g. Col. 1, Lines 9-12 and Col. 2, Lines 60-62). Williams further states that the indicator alerts the user that by-pass leakage is about to commence. (see e.g. Col. 2, Lines 10-15, Col. 3, Lines 10-12). In essence, the signal tampon of Williams provides a burst of sensation, or signal, to the user that user should change her tampon. The signal would need to be intense enough such that signal alerts the wearer that she needs to immediately remove and replace the tampon. (see e.g. Col. 3, Lines 54-56).

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Hasegawa et al. teaches using various chemical substances to provide for sustained release of animal repellent chemicals (see e.g. Col. 2, lines 19-31). An animal repellent differs from an insect repellent in that the animal repellent is applied to some physical land or space to keep animals from intruding upon the space whereas insect repellents are typically applied to a human's skin to keep insects from landing thereon. In one example of Hasegawa et al. at Col. 6, Lines 42-52, related to attempting to keep birds out of a particular tree, the release of the animal repellent is thought to be sustained over about 3 weeks. The release time of interest in Hasegawa et al., as illustrated in FIGS. 1-7 and described in the Examples, is on the order of days to provide for a long lasting animal repellent.

One skilled in the art seeking to provide for long lasting comfort for hygienic articles would not be motivated to combine Williams, which teaches how to achieve a burst of sensation, with Hasegawa et al., which teaches chemical substances to provide for sustained release of an animal repellent, because the utility for the references are at opposite ends of the spectrum in terms of release time. Hygienic articles are typically designed for periods of use less than about eight hours. Hasegawa et al. is related to providing for sustained chemical release over a period of days. One skilled in the art would not be motivated to combine a reference related to a tampon designed to be used for a time less than about eight hours with a reference related to providing for sustained chemical release over a period of days because the time scales over which the subject matter of each reference is designed to function are so radically different. Williams desires a rapid impulse release whereas Hasegawa et al. desires a slow sustained release.

Second, modifying Williams, as taught by Hasegawa et al., would render Williams unsatisfactory for its intended purpose. Under *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984), if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. As discussed above, the tampon in Williams is to provide a signal that the capacity of the tampon is exhausted. If the teaching of Hasegawa et al. is applied to the tampon of Williams, the signal from the tampon in Williams would be dampened. The lack of distinctness of a signal in the tampon might fail to provide the immediate alert that by-pass leakage is about to occur which would make the tampon of Williams unsatisfactory for its intended purpose.

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An analogous colloquially known scenario is that when a frog is placed in cool water and the water is heated, the frog does not jump out because the sensation provided by the change in temperature is not striking. When the frog is placed in hot water, the frog immediately jumps out because the sensation of hot water provides for a stark change in sensation and the frog recognizes that his environment has changed. The analogy is that a burst of signal provided by the tampon in Williams is like the frog being placed in hot water, the user of the tampon recognizes the signal that she needs to urgently change her tampon. If the signal provided by the tampon in Williams is weaker, the tampon user might respond like the frog in water that is gradually warmed and the tampon user may fail to change her tampon, thereby suffering adverse consequences.

Third, the proposed modification or combination of Williams with Hasegawa et al. would change the principle of operation of Williams. Under, *In re Ratti*, 270 F.2d 810 (CCPA 1959), if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. As discussed above, the principle of operation of Williams is to provide a distinct signal that the capacity of the tampon is exhausted. Applying the teaching of Hasegawa et al. would dampen the signal provided by Williams. Thus, the principle of operation would change from providing a distinct alert, as in Williams, to providing for a weaker change in sensation to the user that the capacity of the tampon is exhausted if the teaching of Hasegawa et al. is followed.

Even if a *prima facie* case of obviousness is established, the Applicants submit that Williams teaches away from making the modification of Hasegawa et al. Williams teaches that the signal tampon should provide an alert that the capacity of the tampon is exhausted, that by-pass leakage is about to occur, or that the user needs to immediately remove or replace the tampon. One skilled in the art considering Williams would understand that distinctness and intensity of the signal provides the benefit sought in Williams and would not seek to reduce the sensational impact by following the teaching of Hasegawa et al., which would lower the intensity of the signal provided to the user. Thus, the Applicants submit that Williams teaches away from applying the release control agents taught in Hasegawa et al. to the tampon in Williams.

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Based on the above, the Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness against Claim 10 of the present application. Even if a *prima facie* case of obviousness is established, the Applicants submit that the *prima facie* case of obviousness is rebutted because Williams teaches away from making the combination suggested in the Office Action. The Applicants submit that Claim 10 is allowable and respectfully request that Claim 10 be allowed.

Claims 11-17, 19, and 20 depend upon Claim 10. As discussed above, the Applicants submit that Claim 10 is allowable. Thus, the Applicants submit that Claims 11-17, 19, and 20 are also allowable. The Applicants respectfully request that Claims 11-17, 19, and 20 be allowed.

Rejection Under 35 U.S.C. § 103(a) Over Brunner et al. (U.S. 5,733,272) in View of
Furman (U.S. 5,451,404)

Claims 10-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brunner et al. (U.S. 5,733,272) in view of Furman (U.S. 5,451,404), with Furman being relied upon for teaching related to Claims 15 and 16 of the present application. As best understood by the Applicants, claims 10-14, 17, 19, and 20 are rejected over Brunner et al. and Claims 15 and 16 are rejected over Brunner et al. in view of Furman.

The Applicants respectfully assert that the Office Action fails to establish a *prima facie* case of obviousness against Claim 10 because there is no teaching, suggestion, or motivation to modify Brunner et al. to provide a hygiene article comprising a composition comprising a cooling agent together with an ester derivative. Furthermore, Brunner et al. teaches away from a hygiene article comprising a composition comprising a cooling agent together with an ester derivative.

The Applicants submit that there is no teaching, suggestion, or motivation to modify Brunner et al. as described in the Office Action for three reasons. First, Brunner et al. is directed to an absorbent article for odor control having a positive scent signal. (see e.g. Title of Brunner et al.). Brunner et al., Col. 2, Lines 8-9, state that "the positive odor is preferably fleeting and is delivered in "bursts" during use." If the article of Brunner et al. provided for a sustained release of odor, the user might not be able to detect the positive scent signal because as stated in Brunner et al., Col. 2, Lines 7-8, "consumers

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become habituated to constant odors.” As described in the Applicants’ specification, Page 20, Lines 29-34, the ester derivative provides for sustained delivery of the freshness sensation over longer periods of time compared to compositions having the same type and level of cooling agent but in absence of such an ester derivative. Thus, one skilled in the art would not be motivated to modify Brunner et al., which is directed to achieving a burst of positive scent signal, in the manner stated in the Office Action because the modification would result in a muting of the burst and the burst would not be fleeting, as preferred by Brunner et al.

Second, modifying Brunner et al. in the manner described in the Office Action would render Brunner et al. unsatisfactory for its intended purpose. Under *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984), if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. As discussed above, the article in Brunner et al. is to provide a fleeting burst of positive odor. Modifying Brunner et al. in the manner described in the Office Action would mute the burst of odor and the odor would not be fleeting. The purpose of Brunner et al. would be frustrated by such modification because Brunner et al., Col. 2, Lines 7-8, states that “consumers become habituated to constant odors” which means that a wearer might not detect the scent release and gain the benefit of feeling greater self-confidence from knowing her absorbent article is functioning properly, which is a purpose of the article of Brunner et al. (see e.g. Col. 2, Lines 9-11).

Third, the modification of Brunner et al. as described in the Office Action would change the principle of operation of Brunner et al. Under, *In re Ratti*, 270 F.2d 810 (CCPA 1959), if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. As discussed above, the principle of operation of Brunner et al. is to provide a burst of positive scent signal. Modifying Brunner et al. in the manner described in the Office Action would dampen the burst of scent signal provided by Brunner et al. Thus, the principle of operation would change from providing a burst of scent signal, as in Brunner et al, to providing for a muted change in odor if the modification described in the Office action was made to Brunner et al.

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Even if a *prima facie* case of obviousness is established, the Applicants submit that Brunner et al. teaches away from making the modification described in the Office Action. Brunner et al. teaches that the positive scent signal should provide a burst of scent so that the wearer does not become habituated to a constant odor. One skilled in the art considering Brunner et al. would understand that distinctness and intensity of the scent signal provides the benefit sought in Brunner et al. One skilled in the art would not seek to reduce the sensational impact by modifying Brunner et al. in the manner stated in the Office Action, which would lower the intensity of the scent signal provided to the user. Thus, the Applicants submit that Brunner et al. teaches away from a hygiene article comprising a composition comprising a cooling agent together with an ester derivative.

Based on the above, the Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness against Claim 10 of the present application. Even if a *prima facie* case of obviousness is established, the Applicants submit that the *prima facie* case of obviousness is rebutted because Brunner et al. teaches away from making the modification stated in the Office Action. The Applicants submit that Claim 10 is allowable and respectfully request that Claim 10 be allowed.

Claims 11-14, 17, 19, and 20 depend upon Claim 10. As discussed above, the Applicants submit that Claim 10 is allowable. Thus, the Applicants submit that Claims 11-14, 17, 19, and 20 are also allowable. The Applicants respectfully request that Claims 11-14, 17, 19, and 20 be allowed.

In regard to the rejection of Claims 15 and 16 over Brunner et al. in view of Furman, the Applicants submit that Claims 15 and 16 are allowable because these claims depend upon Claim 10. As discussed above, the Applicants submit that Claim 10 is allowable. Therefore, the Applicants submit that Claims 15 and 16 are also allowable. The Applicants respectfully request that Claims 15 and 16 be allowed.

Conclusion

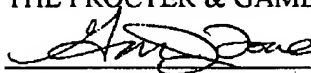
This response represents an earnest effort to place the present application in proper form and to distinguish the invention, as claimed, from the applied references. In view of the foregoing, entry of the amendment presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

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Respectfully submitted,

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